

A UN Security Council ICC Referral for the Darfur Crisis in Sudan

The Conflict: The Darfur conflict began in February 2003 when two African rebel movements, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) revolted, claiming that the Government had been neglecting Darfur and its people. The Government responded with a counter-insurgency campaign led by an Arab militia frequently referred to as “Janjaweed”, a Darfurian term for an armed bandit on a horse or camel. As a result of the fighting between the rebels on the one hand, and the Government and the Janjaweed on the other, attacks on civilians, as well as destruction and burning of villages became widespread. As of June 2005, at least 180 000 people were estimated to have been killed while over 2 million other had been displaced.

Jurisdiction of the ICC: Prosecutions by the International Criminal Court (ICC) can be initiated in four ways: when the accused is a national of a State Party, the alleged crime(s) took place on the territory of a State Party, the UN Security Council refers the case, or a country specifically consents to ICC jurisdiction over a particular situation involving the country’s territory or national. An ICC investigation or prosecution covers an entire situation giving rise to possible crimes regardless of the nationality of the accused. The political position or official rank of an accused does not affect ICC jurisdiction. Sudan is not a State Party and was unlikely to consent to ICC jurisdiction; therefore a Security Council referral was the only remaining method for the ICC to obtain jurisdiction over the situation in Darfur. Under Article 13(b) of the Rome Statute, the Court may accept jurisdiction when the Security Council, acting under Chapter VII of the UN Charter, refers a situation to the ICC’s Prosecutor. Chapter VII of the UN Charter authorizes the Security Council to require UN Member States to take specified actions to preserve international peace and security.

Key United Nations Actions to Date:

Security Council Resolution 1547 of June 11, 2004 established the United Nations Advance Mission in Sudan (UNAMIS) and also stated that the Security Council would consider establishing a UN peace support operation once a Comprehensive Peace Agreement was reached.

Security Council Resolution 1556 of July 30, 2004 called for the Government of Sudan to disarm the Janjaweed militias and to bring to justice those responsible for atrocities, and imposed an arms embargo on all non-governmental combatants, including the Janjaweed. It also noted its intent to consider further action if progress was not made within 30 days.

Security Council Resolution 1564 of September 18, 2004 noted that the Government of Sudan had failed to disarm the Janjaweed militia, provide security for civilians, and bring perpetrators of the violence to justice and called for the establishment of an international

commission of inquiry to determine whether acts of genocide have occurred and to identify perpetrators.

Security Council Resolution 1574 of November 19, 2004 was the product of a Security Council meeting in Nairobi, Kenya. This is a fairly weak resolution that expressed support for efforts to reach a comprehensive peace agreement while extending the mandate of UNAMIS until March 10, 2005.

The **UN Commission of Inquiry on Darfur** publicly released its report on February 1 **2005**, in which it "strongly recommend[ed]" that the Security Council invite the International Criminal Court to pursue prosecutions against those suspected of the worst abuses. The Commission of Inquiry found that although the government of Sudan had probably not pursued a deliberate policy of genocide, a competent court might well find that its officials or other Sudanese individuals had committed acts of genocide.

US response to Commission of Inquiry Report: The Bush administration initially proposed that potential Darfur prosecutions be sent to a new tribunal that would be run jointly by the African Union and the United Nations and be based at the International Criminal Tribunal for Rwanda, in Arusha, Tanzania. Pierre-Richard Prosper, the US ambassador at large for war crimes, stated that the United States did not "want to be party to legitimizing the ICC." However, other members of the Security Council did not favor this option.

Security Council Resolution 1590 of March 24, 2005 established the United Nations Mission in Sudan (UNMIS) and determined that it would work closely together with the African Union Mission in Sudan (AMIS). It also called upon the Sudanese Government and the rebel groups to resume peace talks.

Security Council Resolution 1591 of March 29, 2005 ordered a travel ban and a freeze on all assets for persons who impede the peace process, constitute a threat to stability in Darfur and the region or commit violations of international humanitarian or human rights law.

Security Council Resolution 1593 of March 31, 2005 referred the Darfur situation to the ICC. The resolution passed by 11 votes in favor and four abstentions, including the United States. In order to avoid a US veto, Security Council members agreed to include a provision that exempts from ICC's jurisdiction non-Sudanese nationals from a State not party to the Rome Statute. The US abstention on the referral is a major break with its policy of hostility to the ICC. This may well lead to at least discreet US cooperation with the Court on Darfur.

ICC action: Further to the Security Council referral, the ICC Prosecutor decided to formally open an investigation into the Darfur situation on June 6, 2005.